

CIVIL SERVICE COMMISSION MINUTES

November 1, 2000

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Sigrid Pate
Roy Dixon
Barry I. Newman

Comprising a quorum of the Commission

Absent were:

Mary Gwen Brummitt
Gordon Austin

Support Staff Present:

Larry Cook, Executive Officer
Arne Hansen, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
November 1, 2000

1:45 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
			6

COMMENTS Motion by Dixon to approve all items not held for discussion; seconded by Newman. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

- A. Commissioner Austin: Douglas Olins, Esq. on behalf of **Peggy Torralva**, Public Defender Investigator II, appealing an Order of Demotion and Charges from the Department of the Public Defender.
- B. Commissioner Dixon: James Varga, Esq. on behalf of **Charlene Demus**, Protective Services Worker I, appealing an Order of Suspension and Charges from the Health and Human Services Agency.
- C. Commissioner Newman: Todd Tappe, Esq., on behalf of **Maurice Jackson**, Senior Probation Officer, appealing an alleged disciplinary reassignment with the Department of Probation. (Pre-hearing conference)

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

- 1. Approval of the Minutes of the regular meeting of October 4, 2000.

Approved.

CONFIRMATION OF ASSIGNMENTS AND REASSIGNMENTS

Assignments

- 2. Commissioner Pate: Richard Pinckard, Esq., on behalf of **Peter**

Sheppard, Deputy Sheriff, appealing an Order of Reassignment and of Pay Step Reduction and Charges from the Sheriff's Department.

Confirmed.

Reassignments

3. Commissioner Newman as hearing officer in the appeal of **Rick Simica**, Deputy Sheriff, appealing CLERB's findings. Commissioner Austin previously assigned.

Confirmed.

4. Commissioner Brummitt as hearing officer in the appeal of **Linda Hearn**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department. Commissioner Austin previously assigned.

Confirmed.

DISCIPLINES

Findings

5. Commissioner Newman: Todd Tappe, Esq., on behalf of **Maurice Jackson**, Senior Probation Officer, appealing an alleged disciplinary reassignment with the Department of Probation. (Pre-hearing conference)

FINDINGS AND RECOMMENDATIONS:

Appellant is a Senior Probation Officer in the Department of Probation. On July 14, 2000, Employee was reassigned from Camp Barrett to Juvenile Hall where his biweekly work schedule was reduced from 84 hours to 80 hours; work schedules that are normal for those assignments. Appellant retained the same rank, title and base pay that he had at Camp Barrett. Immediately preceding the reassignment, Appellant was given a "Record of Discussion" from the Camp Barrett Director indicating that he had received complaints from subordinate staff that Appellant had used unprofessional and inappropriate behavior for a Senior PO in a leadership position. The director put Appellant on notice that he could be subject to discipline, up to and including termination if similar behaviors ensued. The "Record of Discussion" was to remain in Appellant's on site personnel file for up to one year or the next performance appraisal, whichever came first. Attorney for Appellant, Todd Tappe, Esq. alleged that Appellant's reassignment was disciplinary in nature. Using the analysis and definitions in Dobbins and Head, Mr. Tappe maintained that the transfer was disciplinary in nature, as well as a reduction in compensation, invoking Appellant's right to appeal. The Department's stance relied on Probation Officer's Memorandum of Agreement, Article 5, Section 2, stating that any administrative transfer is initiated and based upon the Department's needs or any other reason necessary to insure adequate public service. Further, the Department stated that a transfer may be initiated to ensure a hostile free work environment, and as such, is considered a

departmental need. The Department addressed the allegation of loss of compensation in stating that employees enjoy no right to remain in a particular assignment.

The hearing officer took into consideration case law and Civil Service Rules. He recognized the fine line between a "record of discussion" and a disciplinary action. The hearing officer took particular notice of the Department's contention that it reassigned Appellant for operational needs and not for disciplinary reasons. It is therefore recommended that the Civil Service Commission determine that the July 14, 2000 reassignment of Appellant from Camp Barrett to Juvenile Hall was not a disciplinary action; that Appellant is not entitled to a Rule VII hearing; that the proposed Decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

**Motion by Newman to approve Findings and Recommendations;
seconded by Dixon. Carried.**

6. Commissioner Austin: Douglas Olins, Esq. on behalf of **Peggy Torralva**, Public Defender Investigator II, appealing an Order of Demotion and Charges from the Department of the Public Defender.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause 1 - Dishonesty (fabrication, dishonesty and lack of credibility); Cause 2 (deleted by Department prior to start of hearing); Cause 3, Discourteous Treatment (inappropriate, discourteous and disrespectful discussion with fellow supervisor); Cause 4 - Conduct unbecoming an officer or employee of the County; Cause 5 - Failure of good behavior. After both the Department and Appellant presented their case in principal, Appellant's attorney requested the hearing officer's view of the case at that time. Preliminary impressions led the Hearing Officer to advise the parties that in most appeals involving dishonesty with respect to agencies involved in law enforcement, the discipline is termination. Further, the hearing officer advised all parties that the Commission was authorized to increase as well as decrease discipline.

Following a brief recess, Appellant advised the hearing officer of her desire to withdraw her appeal, and motioned to dismiss the cause and charges in Cause 1. The Department submitted on Cause 1(C) but opposed the motion on all other charges. Nevertheless, Appellant withdrew her appeal. It is therefore recommended that Appellant's withdrawal be accepted; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and the Commission approve and file this Report.

**Motion by Pate to approve Findings and Recommendations; seconded
by Newman. Carried. Withdrawn.**

7. Commissioner Dixon: James Varga, Esq. on behalf of **Charlene Demus**, Protective Services Worker I, appealing an Order of Suspension and Charges from the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - insubordination (direct violation of policy as stated in the Childrens Services Program Guide); Cause II - Incompetence (examination of two unclothed children in violation of policy); Cause III - Conduct unbecoming an employee of the County; Cause IV - Failure of good behavior; and Cause V - Acts incompatible with or inimical to the public service. Employee has been a Protective Services Worker in HHSA for approximately 11 years. She worked in the Agency's Children Services Bureau at the Tayari Outstation, and Employee had no record of prior discipline. The following facts were undisputed: On January 10, 2000 Employee received a referral stating that foster children, assigned to Employee, had been sexually molested at the foster home. Employee was aware of several other earlier complaints about the same foster home. On January 12, 2000, Employee conducted an exam of the children in a private room in the presence of the foster parent. This procedure was in accordance with Agency policy which required sensitivity to a child's feelings and which required the presence of an adult witness whenever intending to disrobe a child. With the assistance of the foster parent, the children were at least partially disrobed and examined. There was no indication of embarrassment or trauma or other negative effects on the children, and the foster parent was apparently satisfied with Employee's conduct. The children remained assigned to Employee's care. On January 18, 2000, the Adoption Division chief advised Employee's immediate supervisor that the reports prepared by Employee regarding her examination of the children raised concern in that "social workers are to NEVER do evidentiary exams for molest...". On January 31, 2000 and February 1, 2000, Employee revised her initial reports. Subsequently, the Agency alleged that Employee falsified her revised reports to conceal violations of policy during her examination of the children.

A Skelly hearing was conducted and Employee's discipline was reduced to a five working-day suspension and the Proposed Order of Suspension and Removal was revised, deleting several charges and substituting the cause of dishonesty with the cause of insubordination. Primarily, the Order of Suspension charges Employee with totally disrobing the children against Agency policy. Employee admitted that she visually examined the children while they were totally disrobed. At the Commission hearing, Employee testified that she was not familiar with the Agency policy, however in 1997 Employee certified an acknowledgment that she would be responsible for knowing and following Bureau-specific policies. She also certified that failure to comply with standards and policies may subject her to disciplinary action.

The Regional Manager in charge of the Childrens Services Bureau testified that there was some case-by-case flexibility in the application of the policy. Additionally, at the Commission hearing, there was some indication of a distinction between an invasive or

evidentiary examination in the context of a sexual abuse investigation, in comparison to incidental viewing of the genitals while examining a child in other circumstances.

By a preponderance of evidence the Agency proved that Employee violated the policy regarding disrobing the children by not being familiar with the policy. However, there is some flexibility in the application of the policy to each situation. Employee was sensitive in the examination and feelings of the children under her care, had an adult witness during the examinations and kept her immediate supervisor informed regarding the situation. Moreover, the children were not harmed and remain assigned to Employee. Taking all matters into consideration, the hearing officer felt the five working-day suspension was unduly harsh. Nevertheless, Employee failed to familiarize herself with the Agency's policy on an important and sensitive topic and as a result, Employee was not competent. Employee was found not guilty of Cause I, insubordination; Cause III, conduct unbecoming an Employee of the County; Cause IV, failure of good behavior; and Cause V, acts incompatible with or inimical to the public service. Employee was guilty of incompetence. It is therefore recommended that the Order of Suspension be modified to a letter or reprimand; that the Employee be awarded back pay, benefits, and interest for any suspension time already served related to the Order of Suspension, minus any wages she received from outside employment; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this Report.

Motion by Pate to approve Findings and Recommendations; seconded by Newman. Carried.

DISCRIMINATION

Findings

8. Commissioner Dixon: **Yvonne Carla Hand**, former Legal Assistant I, Office of the District Attorney, alleging age, race, and disability discrimination by the Office of the District Attorney.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on September 6, 2000, the Commission appointed Roy Dixon to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurs with the findings that complainant failed to establish allegations of discrimination, and probable cause that a violation of discrimination laws occurred was not established. It is therefore recommended that: Yvonne Carla Hand's complaint be denied; and the Commission approve and file this report with a finding of no probable cause that Complainant has been discriminated against on any basis protected by law.

Motion by Dixon to approve Findings and Recommendations; seconded by Newman. Carried.

SELECTION PROCESS

Findings

9. Commissioner Brummitt: **Angela Rackley**, Protective Services Worker II, appealing the selection process for the classification of Protective Services Worker III in the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

Employee has been employed by the County of San Diego since 1993, most recently as a Protective Services Worker II. Employee timely filed her denial of promotion to PSW III in April, 2000. She was denied promotion solely because one of her two performance appraisals in the last two years was below standard. The Agency testified at the hearing that since 1993, there is a policy requiring all employees to maintain standard or above standard performance appraisals for at least two years prior to consideration for promotion. At the hearing, Employee inferred that she was not aware of the two-year requirement.

The two-year requirement for standard or above standard performance appraisals at HHSA has been an issue of contention in 1998 and 1999. At those Commission hearings, HHSA was criticized for not clearly communicating the two-year requirement. Even though this policy may be understood by most HHSA employees, the hearing officer felt that it should have been placed in writing immediately after the Commission's 1998 hearing, and further, that it should have been in writing in 1993 when it originally became official. Although HHSA did not properly communicate this matter as addressed above, the policy is reasonable. HHSA had the right to establish this policy and it had the right to deny promotion to employees based on failure to meet the standard. It is therefore recommended that Appellant's appeal be denied; that this proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

Motion by Pate to approve Findings and Recommendations; seconded by Newman. Carried.

10. **Ernest Stratis**, appeal of removal of his name by the Department of Human Resources from the employment list for Correctional Deputy Sheriff.

11. **Denis Smith**, appeal of removal of his name by the Department of Human Resources from the employment list for Deputy Sheriff Cadet.

12. **Michael Rand**, appeal of removal of his name by the Department of Human Resources from the employment list for Deputy Sheriff Cadet.

RECOMMENDATION: Ratify item Nos. 10-12. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item Nos. 10-12 ratified.

OTHER MATTERS

Extension of Temporary Appointments

13. Health and Human Services Agency

- A. 12 Eligibility Technicians (Sary Villarreal, Dora Garcia, Leslie Sunderland, Mario Olmedo, Maria Elena Diaz, Estrella Pangilinan, Blanca Velazquez, Leonora Aguayo, Mildred Salamanca, Romeo Montillano, Ron Kroopkin, Rosa Incontro)
- B. 8 Program Specialist II's (Guadalupe Michel-Guerrero, Patricia Madison, Vera Martin, Regina Williams, Susan Battisti, Dennis Moseley, Dorcas Angier, John Haefner)

14. Department of Probation

- 1 Probation Aide (Laura Velasco)

15. Office of the District Attorney

- 1 Legal Support Assistant I (Debra Zook)

RECOMMENDATION: Ratify Item Nos. 13-15.

Item Nos. 13-15 ratified.

16. Public Input.

ADJOURNMENT: 3:15 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE DECEMBER 6, 2000.